THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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W.P. Nos. 13511/1995 and 14579/1995

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Dt.16-3-2006

WP No.13511/1995:

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1. C.R.Damodar Reddy and others. ..Petitioners

V.

1. The District Collector, Nampally Station Road, Hyderabad

and another. ..Respondents.

WP No.14579/1995

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1. Dr. B.G.Savaria and another. ..Petitioners

V.

1. The District Collector, Hyderabad and another. ..Respondents.

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

W.P. Nos. 13511/1995 and 14579/1995

COMMON ORDER:

Since the identical issue that arises for consideration in both the writ petitions is one and the same, they are being disposed of by this common order.

The petitioners 1 to 4 and 11 in WP No.13511/1995 are the purchasers of various extents of plots bearing plot Nos.13/A, 317/A.A, 79/C and 80/C part, 13/A/B and 175/A/B respectively from the original allottess and members of Sri Venkateswara Co-operative House Building Society, Hyderabad (for short "the Society"). Petitioners 5 to 10 are the original allottees or nominees of the members of plot bearing Nos.317/A, 315/A, 21/C, part of 60-C, 1/B and 4/B respectively. The petitioners in WP No.14579/1995 are the purchasers from the original allottees of plot Nos. 25/C and 9/B. Except petitioner No.10 in WP No.13511/1995, the remaining petitioner constructed houses on the plots allotted as per the lay-out by the Society as per the sanctioned plan by the Municipal Corporation of India. While so, the Deputy Director of Survey and Land Records, Hyderabad got the land surveyed and prepared sketches and found that all the petitioners are in occupation of excess area than the allotted area. Accordingly, the revenue officials with the assistance of police and bulldozers and with the demolition squad started demolishing the structures and compound walls without specifying the excess area which is in their occupation. Aggrieved by the action of the respondents, the present writ petitions have been filed.

The Mandal Revenue Officer, Shaikpet Mandal filed a counter-affidavit stating that the Government in G.O.Ms. No.176 Revenue dt. 9-2-1982 have allotted only 100 acres of land to the Society on payment of market value at Rs.8500/- per acre. Out of 100 acres, Ac.91-20 guntas falls in TS No.1/Part, Block "J" Ward No.12 and an extent of Ac.8-20 guntas falls in TS No.3, Block "G" Ward No.9. On handing over the site to the Society, it got approved lay-out by Municipal Corporation of Hyderabad under permit No.74/23 dt. 10-3-1985 and sold out the plots to its members. The total area of the approved layout is Ac.103-20 guntas as against 100 acres allotted by the Government. On physical verification, an extent of Ac.4-00 of Government land is encroached by the Society. As the members have occupied and constructed houses in the said area, the Government on the representation of the Society, allotted Ac.4-00 acres of land in S.No.102/1 of Hakimpet through G.O.Ms.No.1013 Rev (Assn.III) Department dt. 8-11-1991. In spite of the said allotment, it was found that the petitioners have encroached the land of the Government adjacent to their plots ranging from 67 sq.yards to 664 sq.yards as detailed in the counter. Since the petitioners are having excess land than the allotted land by the Society, the authorities are trying to protect the land belonging to the Government. But the counter is silent about the notice if any issued to the members of the society before survey conducted by the Deputy Director of Survey and Land Records or after survey specifying the excess area in their occupation, which is liable for demolition/eviction etc.,

Sri D.Sudarshan Reddy, learned Senior Counsel appearing for the petitioners contends that since the land is covered with big boulders, it is difficult to measure correctly the area allotted to the members and even if there is any excess land in occupation of the petitioners, the authorities are under obligation to conduct survey after due notice to the plot owners and demarcate the excess land which is in their occupation and without adopting such course, they cannot demolish the structures by using force.

Learned Government Pleader for Revenue submits that if the Society or its members are in occupation of the excess area than allotted by the Government, they have to necessarily follow the procedure as contemplated under the Land Encroachment Act or any other law in force for recovery of the land by specifying the excess land in their occupation as against allotted area.

Once the authorities found that the Society or the petitioners who are members or purchasers from the original allottees of the Society are in occupation of the excess area than allotted by the Society, they are under obligation to issue notice specifying the area excess in their occupation and if the said occupation is unauthorized and any construction is made they have to give a notice asking them whether they are willing for regularization of the land by paying market value, as per the scheme/policy in force, and if it is not possible to surrender the same. Since structures have already been made, and if any policy of the Government is in force, the respondents can regularize the same as per the policy. Without adopting such of the measures, straight away cannot demolish the structures on the unilateral survey conducted by the Deputy Director of Survey and Land Records and without giving any notice to the petitioners holding that they are in occupation of the excess area than what they are entitled.

In view of the same, the respondents are directed not to demolish the structures or evict the petitioners from their respective plots without first identifying the excess area which is in their occupation than the allotted area by the Society and follow necessary procedure either for eviction or for regularization on payment of market value, as the case may be.

With the above direction, the writ petition is accordingly disposed of. No costs.

Kmr 16-3-2006